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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DURAND "DEE" SPLATER, and CARLA JOHNSON, on their own behalf and on behalf of all others similarly situated, Plaintiffs, v. THERMAL EASE HYDRONIC SYSTEMS, INC., a Washington corporation; PLASCO MANUFACTURING LTD., n/k/a UPONOR CANADA, INC., a Canadian corporation; HOT WATER SYSTEMS NORTH AMERICA, INC., a Delaware corporation; and UPONOR OYJ, also known as UPONOR GROUP, a Finnish corporation, Defendants.	Case No. CV03 3012C NOTICE AND PETITION FOR REMOVAL TO FEDERAL COURT 03-CV-03012-CMP

TO: The Clerk of the United States District Court for the Western District of Washington at Seattle;

TO: Durand "Dee" Splater and Carla Johnson, Plaintiffs

AND TO: Christopher I. Brain and Beth E. Terrell of Tousley Brain Stephens PLLC, Attorneys of Record for Plaintiffs

ORIGINAL

MILLER NASH LLP
ATTORNEYS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

Please take notice that Defendants Plasco Manufacturing Ltd. n/k/a Uponor Canada, Inc., Hot Water Systems North America and Uponor OYJ ("Removing Defendants") hereby give notice of and petition the Court for removal of the action known as *Durand "Dee" Splater and Carla Johnson v. Thermal Ease Hydronic Systems, Inc., Plasco Manufacturing LTD, n/k/a Uponor Canada, Inc., Hot Water Systems North America, Inc., and Uponor Oyj, a/k/a Uponor Group* to the United States District Court for the Western District of Washington at Seattle. The state court action is presently pending under Cause No. 03-2-33553-3 SEA in the Washington State Superior Court, King County. A "Notice of Removal to Federal Court" will be filed immediately in the King County Action and delivered to the plaintiffs, care of their counsel of record.

GROUNDS FOR REMOVAL

1. On or about August 14, 2003, Plaintiffs commenced the above-referenced state court action against Defendants. Defendants first received a copy of Plaintiffs' Summons and Complaint on or after September 12, 2003. Defendant Hot Water Systems North America, Inc. first received a copy of Plaintiffs' Summons and Complaint on September 12, 2003. Pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446, the Removing Defendants hereby remove this action from the Superior Court, King County, Washington, to the United States District Court for the Western District of Washington.

2. Durand "Dee" Splater owns three properties that he alleges are affected by products purportedly provided by Defendants. Mr. Splater has asserted, among other cause, a claim under Washington's Consumer Protection Act and has alleged that:

> As a result of Defendants' unfair and deceptive practices, Plaintiffs and the Class are entitled to injunctive relief in the form of restitution and/or disgorgement of funds paid to Defendants to purchase UltraPEX, or to repair and replace UltraPex and/or their hydronic heating systems, as well

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> as compensatory and *treble damages, attorney's fees*, and costs pursuant to RCW 19.86 *et seq.*

See Complaint at ¶ 9.6 (emphasis added).

3. Removing Defendants' grounds for removal of this action are:

   (a) There is complete diversity of citizenship between the parties in interest because:

      (i) The Plaintiffs are citizens of King County, Washington State (see Complaint at ¶ 6.1-6.2);

      (ii) The Removing Defendants are citizens of Canada, Delaware and Finland (id. at ¶ 6.3-6.5); and

      (iii) Defendant Thermal Ease Hydronic Systems, Inc. is a dissolved corporation and is not a true party in interest to this suit.

   (b) Upon information and belief, the damages Plaintiff Durand "Dee" Splater seeks are in excess of $75,000 and the damages Plaintiff Carla Johnson seeks may also exceed $75,000.

4. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a). This is a civil action between citizens of different states and, according to the allegations in the Complaint, the amount in controversy for at least one of the putative class representatives exceeds $75,000, exclusive of costs and interests. This Court may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over any member of the putative class who is not seeking damages in excess of $75,000.

5. Removal of this action is proper pursuant to 28 U.S.C. § 1441, because this is a civil action brought in state court over which the federal district courts would have had original jurisdiction pursuant to 28 U.S.C. § 1332(a).

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6. This Notice of Removal is being filed within thirty (30) days after the receipt by the named Defendants of a copy of Plaintiffs' Summons and Complaint and is, therefore, timely under 28 U.S.C. § 1446(b).

7. A copy of this Notice of Removal is beings served today upon Plaintiffs' attorneys, Christopher I. Brain and Beth E. Terrell, Tousley Brain Stephens PLLC, 700 Fifth Avenue, Suite 5600, Seattle, Washington, 98104-5056. Plaintiffs will thereby be placed on notice that all further proceedings in this matter must be heard before this Court.

PLEADINGS SERVED

Pursuant to 28 U.S.C. § 1446(a), true and accurate copies of all process, pleadings, and orders served to date on Removing Defendants are attached hereto: summons, complaint, order setting civil case schedule, and order changing case designation area from Kent to Seattle.

The Removing Defendants expressly reserve the right to raise all defenses and objections to Plaintiffs' purported claims or to otherwise plead in this action in the United States District Court.

DATED this 10th day of October, 2003.

MILLER NASH LLP

Daniel A. Brown
WSB No. 22028
James H. Jordan, Jr.
WSB No. 15796

Attorneys for Removing Defendants

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and

Terrence E. Bishop, Esq.
John A. Cotter, Esq.
Larkin Hoffman Daly & Lindgren Ltd.
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194

Attorneys for Removing Defendants

I hereby certify that I served the foregoing NOTICE OF AND PETITION FOR REMOVAL TO FEDERAL COURT on:

Christopher I. Brain
Beth E. Terrell
Tousley Brain Stephens PLLC
700 Fifth Avenue, Suite 5600
Seattle, Washington 98104-5056
Telephone: (206) 682-5600
Facsimile: (206) 682-2992

Attorney for Plaintiffs

by the following indicated method or methods:

☐ by **faxing** full, true, and correct copies thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, on the date set forth below. The receiving fax machine was operating at the time of service and the transmission was properly completed, according to the attached confirmation report.

☐ by **mailing** full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Seattle, Washington, on the date set forth below.

☐ by sending full, true and correct copies thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.

☒ by causing full, true and correct copies thereof to be **hand-delivered** to the attorney at the attorney's last-known office address listed above on the date set forth below.

DATED this 10th day of October, 2003.

Daniel A. Brown

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THE HONORABLE TERRY LUKENS

SEP 12 2003
AS

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

DURAND "DEE" SPLATER and CARLA JOHNSON, on their own behalf and on behalf of all others similarly situated, Plaintiffs, v. THERMAL EASE HYDRONIC SYSTEMS, INC., a Washington corporation; PLASCO MANUFACTURING LTD., n/k/a UPONOR CANADA, INC., a Canadian corporation; HOT WATER SYSTEMS NORTH AMERICA, INC., a Delaware corporation; and UPONOR OYJ, also known as UPONOR GROUP, a Finnish corporation, Defendants.	NO. 03-2-33553-3 SEA **SUMMONS (60 DAY)**

TO THE DEFENDANT: HOT WATER SYSTEMS NORTH AMERICA, INC.

A lawsuit has been started against you in the above-entitled Court by the above-named Plaintiffs, Durand "Dee" Splater and Carla Johnson. Plaintiffs' claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorneys for Plaintiffs within sixty (60) days after the service of this Summons, excluding the day of service. If you do not respond, a default judgment may be entered against you without notice. A default judgment is

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one in which Plaintiffs are entitled to what they ask for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

You may demand that Plaintiffs file this lawsuit with the Court. If you do so, the demand must be in writing and must be served upon Plaintiffs. Within fourteen (14) days after you serve the demand, Plaintiffs must file this lawsuit with the Court, or the service on you of this Summons and Complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

DATED this 10 day of September, 2003.

TOUSLEY BRAIN STEPHENS PLLC

By: ______________________
Christopher I. Brain, WSBA #5054
Beth E. Terrell, WSBA #26759
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Attorneys for Plaintiff

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RECEIVED
In King County Superior Court Clerk's Office

AUG 14 2003

Cashier Section
Superior Court

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

DURAND "DEE" SPLATER, and CARLA JOHNSON, on their own behalf and on behalf of all others similarly situated, Plaintiffs, v. THERMAL EASE HYDRONIC SYSTEMS, INC., a Washington corporation; PLASCO MANUFACTURING LTD., n/k/a UPONOR CANADA, INC., a Canadian corporation; HOT WATER SYSTEMS NORTH AMERICA, INC., a Delaware corporation; and UPONOR OYJ, also known as UPONOR GROUP, a Finnish corporation, Defendants.	03-2-33553-3KNT CLASS ACTION NO. **CLASS ACTION COMPLAINT FOR DAMAGES, RESTITUTION, AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1.1 Plaintiffs Durand "Dee" Splater and Carla Johnson ("Plaintiffs") bring this action on their own behalf and on behalf of all similarly situated individuals and entities who own or owned homes or other structures in which hydronic heating systems incorporating cross-linked, non-barrier polyethylene pipes or tubing marketed under various names including but not limited to "UltraPEX," (all such pipes or tubing is referred to hereinafter as "UltraPEX") manufactured and installed since January 1, 1995, that was either: (i) manufactured by and sold either directly or indirectly by Plasco Manufacturing Ltd., now

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known as Uponor Canada, Inc. ("Plasco"); and/or (ii) manufactured by Plasco for sale by "private label" vendors ("the Class").

II. FACTUAL ALLEGATIONS

2.1 Radiant heating is a process by which thermal energy is transferred from one object to another. In addition to common "radiant floor" systems, which use tubing in the floors to heat the surface of those floors, there are also systems that "string" plastic tubing through walls or ceilings, transporting hot water directly from the hot water heater to radiators or diffusion structures which use a fan to blow the heated air into the room.

2.2 Radiant heating systems are touted as energy efficient and cost effective. Used for decades in Europe, radiant heating systems have become increasingly common in the United States in the last two decades. These newer systems, commonly referred to as hydronic heating systems, use a variety of tubing materials to transport the water. These materials include plastic, such as cross-linked polyethylene ("PEX").

2.3 Since approximately January 1, 1995, Plasco has been designing, manufacturing, warranting, advertising, distributing, and selling UltraPEX to consumers throughout Washington and the United States for use in hydronic heating systems, even though it knew or should have known that UltraPEX was not suitable for use in hydronic heating systems. Plasco failed to design, formulate, and test UltraPEX adequately before warranting, advertising, and selling it as, among other things, "made with today's most advanced technology, so advanced that our competitors are scrambling to catch up with our quality, efficiency and dimensional consistency." Defendants warranted, advertised, and sold to Plaintiffs and the Class UltraPEX tubing they knew or reasonably should have known fails prematurely and otherwise does not perform as expressly warranted and represented, and/or does not perform in accordance with the reasonable expectations of Plaintiffs and the Class that such product be durable and suitable for use in hydronic heating systems. At the time of manufacture, the risk that UltraPEX would cause Plaintiffs and the Class harm, and the

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magnitude of those harms, exceeded Defendants' cost to design and manufacture a product that would prevent those harms.

2.4 In sales brochures, Defendants stated that UltraPEX is manufactured with "breakthrough methods" for making "PEX of the highest quality." In addition, Defendants claimed that their pipe was "made to the standards [consumers] most respect and need." Defendants knew and had known for many years that UltraPEX does not conform to these representations. In fact, the unstable material composition of UltraPEX virtually guarantees that it will weaken and/or break well in advance of its warranted 25-year useful life.

2.5 Upon information and belief, Plaintiffs allege that UltraPEX was made with inadequate antioxidants, ensuring that the normal and anticipated exposure of the tubing in hydronic heating systems to ordinary tap water which contains chlorine and oxygen would chemically degrade UltraPEX's cross-linked structure and cause it to crack and fail. When used in hydronic heating systems under normal and reasonably expected conditions, UltraPEX becomes brittle and cracks, releasing pressurized hot water and damaging the hydronic heating system, as well as the property's floors, walls, and ceilings. Alternative types of PEX products used in hydronic heating systems, which would have resolved UltraPEX's design deficiencies, have been known and available at marginal additional cost since 1995.

2.6 Despite knowledge of the deficiencies in the design of UltraPEX, Defendants failed to inform Plaintiffs and the Class of the defective nature of UltraPEX and failed to timely remove UltraPEX from the marketplace or take other remedial action.

2.7 Despite knowledge of UltraPEX's defective design, Defendants issued an express written warranty and warranted that UltraPEX was free of defects for a period of 25 years.

2.8 Defendants deceived Plaintiffs and the Class into buying its faulty product by failing to disclose and/or concealing the fact that UltraPEX would weaken, crack, and/or break under normal usage in hydronic heating systems.

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2.9 As a result of Defendants' misconduct, Plaintiffs and the Class have suffered actual damages in that (i) the UltraPEX in their homes and other structures is defectively designed and/or manufactured, and (ii) the UltraPEX in their homes or other structures has failed and will continue to fail prematurely, requiring them to expend thousands of dollars to repair or replace the UltraPEX and, in many cases, to repair the associated property damage. Moreover, these damages have caused or will cause Plaintiffs and the Class to incur the expense of retrofitting, maintaining, repairing, and/or replacing their hydronic heating systems, and to suffer the loss of use of their hydronic heating systems. These damages were not foreseeable because Defendants failed to alert Plaintiffs and the Class that the UltraPEX was defective and not suitable for its intended purpose of use in hydronic heating systems.

III. TOLLING

3.1 Because the defects in the design of UltraPEX are not detectable until manifestation, Plaintiffs and the Class were not reasonably able to discover the problem until long after installation, despite their exercise of due diligence.

3.2 Indeed, even after Class members were aware that UltraPEX was failing, Defendants prevented them from ascertaining that an inherent deficiency in the design of UltraPEX was the cause by asserting that the deterioration was due to faulty installation, poor maintenance, and/or exposure to ultraviolet light.

IV. JURISDICTION

4.1 Jurisdiction is proper in this Court. Plaintiffs seek compensatory damages and injunctive relief on their own behalf and on behalf of all others similarly situated, under the laws of the state of Washington and the similar common and statutory law in effect throughout the United States. The laws of the state of Washington apply to the claims of Plaintiffs and to all Class members. Jurisdiction over Defendants is proper because each Defendant (i) purposefully availed itself of the privilege of conducting activities within the state of

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Washington and maintained continuous and systematic business contacts with the state of Washington and (ii) the claims asserted herein arose out of those contacts.

V. VENUE

5.1 Venue is proper in this Court because (a) some of the described injuries to property occurred in King County; (b) some of the acts and transactions described herein occurred within King County; and (c) Defendants did business in King County by selling, marketing, and/or warranting the UltraPEX at issue here.

VI. PARTIES

6.1 Plaintiff Durand "Dee" Splater is a Washington citizen who resides in King County. Mr. Splater owns the following three properties located in King County, Washington in which hydronic heating systems were installed in 1999 incorporating UltraPEX: (i) 12033 A 20th Avenue NE, Seattle, WA 98125; (ii) 12033 B 20th Avenue NE, Seattle, WA 98125; and (iii) 12033 C 20th Avenue NE, Seattle, WA 98125. In or about February 2003, UltraPEX in the property located at 12033 C 20th Avenue NE, Seattle, WA 98125, failed, resulting in a leak that bored a hole through the sheetrock, causing damage to the ceiling below.

6.2 Plaintiff Carla Johnson is a Washington citizen who resides in King County. Ms. Johnson owns property in King County, located at 3970 - 129th Place SE, Unit A201, Bellevue, WA 98006, in which a hydronic heating system incorporating UltraPEX was installed when the property was built in 1997.

6.3 Upon information and belief, Defendant Uponor OYJ, formerly known as Oy Uponor Ab, also known as Uponor Group ("Uponor"), is a Finnish corporation with its principal place of business in Vantaa, Finland doing business in the state of Washington. Uponor designs, manufactures, warrants, advertises, sells, and/or distributes UltraPEX. According to Uponor's 2001 Annual Report, it is "one of the world's leading suppliers of pipe systems for the building industry and utilities market." Uponor is the parent company of

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Defendants Hot Water Systems North America, Inc., Plasco, now known as Uponor Canada, Inc., and Thermal Ease Hydronic Systems, Inc.

6.4 Upon information and belief, Defendant Hot Water Systems North America, Inc. ("HWSNA") is a Delaware corporation with its principal place of business in Apple Valley, Minnesota doing business in the state of Washington. HWSNA designs, manufactures, warrants, advertises, sells, and/or distributes UltraPEX. HWSNA is the parent company of Defendants Plasco, now know as Uponor Canada, Inc., and Thermal Ease Hydronic Systems, Inc.

6.5 Upon information and belief, Defendant Plasco, now known as Uponor Canada, Inc., is a Canadian corporation with its principal place of business in Regina, Saskatchewan, Canada doing business in the state of Washington. Plasco designs, manufactures, warrants, advertises, sells, and/or distributes UltraPEX.

6.6 Upon information and belief, at all times relevant to the events underlying this lawsuit Defendant Thermal Ease Hydronic Systems, Inc. ("Thermal Ease") was a Washington corporation with its principal place of business in Poulsbo, Washington. Thermal Ease designed, manufactured, warranted, advertised, sold, and/or distributed UltraPEX. Upon information and belief, as of December 1997 70% of Thermal Ease stock was owned by Plasco. On or about April 2000, Thermal Ease and Plasco were reorganized into one sales and manufacturing company operating under the name Plasco Manufacturing Ltd., now known as Uponor Canada, Inc.

VII. CLASS ACTION ALLEGATIONS

7.1 Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated as members of a proposed plaintiff class pursuant to CR 23, and to the extent applicable, the analogous provisions of Federal Rule of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions.

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7.2 The Class is defined as:

> All individuals and entities that own or owned homes or other structures in which hydronic heating systems incorporating UltraPEX manufactured by Plasco are or have been installed since January 1, 1995. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which have a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

7.3 Claims for personal injury are specifically excluded from the Class.

7.4 The Class is comprised of thousands of homeowners and entities, making joinder impracticable. Although the exact number and identities of Class members is unknown at this time, and can only be ascertained through appropriate discovery, Plaintiffs are informed and believe that thousands of property owners have been affected by UltraPEX's defective design. The disposition of the claims of these Class members in a single class action will provide substantial benefits to all parties and to the Court.

7.5 The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, like all Class members, own homes or other structures in which UltraPEX has been installed. UltraPEX has failed, and will continue to fail, prematurely. The representative Plaintiffs, like all Class members, have been damaged by Defendants' misconduct in that they have incurred or will incur the cost of repairing and/or replacing prematurely failing UltraPEX in the hydronic heating systems in their homes or structures as well as the resulting property damage. Furthermore, the factual bases of Defendants' misconduct are common to all Class members and represent a common thread of fraudulent, deliberate, and negligent misconduct resulting in injury to all members of the Class.

7.6 There are numerous questions of law and fact common to Plaintiffs and the Class, and those questions predominate over any questions that may affect individual Class members, and include the following:

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7.6.1 Whether UltraPEX is subject to deterioration and cracking, premature failure, and is not suitable for use in hydronic heating systems.

7.6.2 Whether Defendants knew or should have known of the inherent design defect in UltraPEX;

7.6.3 Whether Defendants fraudulently concealed from and/or failed to disclose to Plaintiffs and the Class the true nature of UltraPEX;

7.6.4 Whether Defendants had a duty to Plaintiffs and the Class to disclose the true nature of UltraPEX;

7.6.5 Whether the facts concealed and/or not disclosed by Defendants to Plaintiffs and the Class are material facts;

7.6.6 Whether as a result of Defendants' concealment of and/or failure to disclose material facts, Plaintiffs and the Class acted to their detriment by purchasing UltraPEX or homes or other structures in which UltraPEX was installed;

7.6.7 Whether Defendants' conduct constituted a violation of the Washington Product Liability Act, RCW 7.72 *et seq.*;

7.6.8 Whether UltraPEX is defectively designed and inherently unsafe and unsuitable for use in hydronic heating systems to an extent beyond that which would be contemplated by an ordinary consumer;

7.6.9 Whether, at the time of manufacture, the risk that UltraPEX would cause harm to Plaintiffs and the Class was greater than Defendants' cost to design and manufacture a product that would prevent those harms;

7.6.10 Whether alternative PEX designs, or alternative products, were available that would serve the same purpose as UltraPEX for a comparable cost;

7.6.11 Whether Defendants breached their express warranty regarding UltraPEX's performance;

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7.6.12 Whether Defendants failed to adequately warn Plaintiffs and the Class regarding UltraPEX's unsuitability for use in hydronic heating systems;

7.6.13 Whether Defendants engaged in unfair competition or unfair deceptive acts or practices when it concealed the true nature of UltraPEX;

7.6.14 Whether Defendants' conduct in marketing and selling UltraPEX constituted a violation of the Washington Consumer Protection Act, RCW 19.86 *et seq.*;

7.6.15 Whether Defendants should be declared financially responsible for notifying all Class members of the problems with UltraPEX and for the costs and expenses of repair and replacement of all such UltraPEX and/or hydronic heating systems in which UltraPEX is installed;

7.6.16 Whether Defendants' representations regarding UltraPEX had a capacity to deceive a substantial portion of the consuming public;

7.6.17 Whether Plaintiffs and the Class are entitled to compensatory, exemplary, and statutory damages, and the amount of such damages; and

7.6.18 Whether Defendants should be ordered to disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of defective UltraPEX, and/or to make full restitution to Plaintiffs and the members of the Class.

7.7 Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting nationwide and multi-state consumer class actions, actions involving defective products, and, specifically, actions involving defective construction materials. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class, and have the financial resources to do so. Neither Plaintiffs nor their counsel has any interests adverse to those of the Class.

7.8 Plaintiffs and the members of the Class have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the

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controversy. Absent a class action, most members of the Class likely would find the cost of litigating their claims to be prohibitive, and would have no effective remedy at law. Because of the relatively small size of the individual Class member's claims, it is likely that only a few Class members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class members will continue to incur damages and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

VIII. FIRST CLAIM FOR RELIEF
(Actionable Misrepresentation)

8.1 Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

8.2 Defendants knew or should have known that UltraPEX was defectively designed, would fail prematurely, was not suitable for use in hydronic heating systems, and otherwise was not as warranted and represented.

8.3 Defendants fraudulently, negligently, or recklessly concealed from and/or failed to disclose to Plaintiffs and the Class the true defective nature of UltraPEX.

8.4 Defendants were under a duty to Plaintiffs and the Class to disclose the defective nature of UltraPEX because (i) Defendants were in a superior position to know the true state of the facts about the design defect in UltraPEX, because the design defect is latent; (ii) Defendants made partial disclosures about the quality of UltraPEX without revealing its true nature; and (iii) Defendants actively concealed the defective nature of UltraPEX from Plaintiffs and the Class.

8.5 The facts concealed and/or not disclosed by Defendants to Plaintiffs and the Class are material facts in that a reasonable person would have considered those facts to be important in deciding whether or not to purchase UltraPEX or property in which it had been

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installed. Had Plaintiffs and the Class known the defective nature of UltraPEX, they would not have purchased property in which it had been installed or would have paid less for such property.

8.6 Defendants intentionally, recklessly, or negligently concealed and/or failed to disclose the true nature of the design defect in UltraPEX for the purpose of inducing Plaintiffs and the Class to act thereon, and Plaintiffs and the Class justifiably relied to their detriment upon the truth and completeness of Defendants' representations about UltraPEX. This is evidenced by Plaintiffs' and Class members' purchase of UltraPEX or homes or other structures in which UltraPEX has been installed.

8.7 Defendants continued to conceal the true nature of UltraPEX even after members of the Class purchased UltraPEX. Indeed, Defendants continue to cover up and conceal the true nature of the problem.

8.8 As a direct and proximate cause of Defendants' misconduct, Plaintiffs and the Class have suffered actual damages in that (i) the UltraPEX in their homes and other structures is defectively designed and manufactured, and (ii) the UltraPEX in their homes or other structures has failed and will continue to fail prematurely, requiring them to expend thousands of dollars to repair or replace the UltraPEX and, in many cases, to repair the associated property damage. Moreover, these damages have caused or will cause Plaintiffs and the Class to incur the expense of retrofitting, maintaining, repairing, and/or replacing their hydronic heating systems, and to suffer the loss of use of their hydronic heating systems.

8.9 As a result of Defendants' misconduct, Plaintiffs and the Class are entitled to compensatory damages, attorneys' fees, costs and interest thereon.

IX. SECOND CLAIM FOR RELIEF
(Violation of Washington's Consumer Protection Act)

9.1 Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

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9.2 Defendants engaged in unfair or deceptive acts or practices when they: (i) represented UltraPEX as durable and made to last, when they lacked credible evidence to support those claims and, in fact, had substantial evidence to the contrary; (ii) failed to disclose their knowledge of the failures in the product, but instead continued to advertise it as a product that could be expected to last 25 years; (iii) failed to disclose the true defective nature of UltraPEX to Plaintiffs and Class members; and (iv) limited their warranty obligations in an unfair and unconscionable way in light of their failure to disclose the true defective nature of UltraPEX to Plaintiffs and Class members.

9.3 Defendants either knew or should have known that UltraPEX was defectively designed, would fail prematurely, was not suitable for use in hydronic heating systems, and otherwise was not as warranted and represented by Defendants.

9.4 Defendants' unfair or deceptive acts or practices repeatedly occurred in Defendants' trade or business, and were capable of deceiving a substantial portion of the purchasing public.

9.5 As a direct and proximate cause of Defendants' unfair or deceptive acts or practices, Plaintiffs and the Class have suffered actual damages in that they have purchased and/or installed in their homes and other structures a product that is defective and that has failed prematurely due to design deficiencies and substandard materials. These failures have caused and will continue to cause Plaintiffs and the Class members to incur expenses repairing and/or replacing UltraPEX, their hydronic heating systems, and related property damage.

9.6 As a result of Defendants' unfair and deceptive practices, Plaintiffs and the Class are entitled to injunctive relief in the form of restitution and/or disgorgement of funds paid to Defendants to purchase UltraPEX, or to repair and replace UltraPEX and/or their hydronic heating systems, as well as compensatory and treble damages, attorneys' fees, and costs pursuant to RCW 19.86 *et seq.*

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X. THIRD CLAIM FOR RELIEF
(Violations of the Washington Product Liability Act)

10.1 Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

10.2 Defendants Uponor, HWSNA, and Plasco are product manufacturers within the meaning of the WPLA, RCW 7.72.010(2).

10.3 Defendant Thermal Ease was a product seller within the meaning of the WPLA RCW 7.72.010(1).

10.4 UltraPEX is a product within the meaning of the WPLA, RCW 7.72.010(3).

10.5 Upon information and belief, Plaintiffs allege that UltraPEX installed in their homes or other structures, and the homes or other structures of the Class, was not reasonably safe as designed in that UltraPEX fails prematurely and is not suitable for use in hydronic heating systems to an extent beyond that which would be contemplated by an ordinary consumer.

10.6 Upon information and belief, Plaintiffs allege that, at the time of manufacture, the risk that UltraPEX would cause the Plaintiffs and the Class harm, and the seriousness of those harms, was greater than the Defendants' cost to design and manufacture a product that would prevent those harms. Alternative PEX designs, as well as other products, were available that would serve the same purpose as UltraPEX for a comparable cost.

10.7 Upon information and belief, Plaintiffs allege that both at the time of manufacture and after UltraPEX was distributed and/or sold, the likelihood that UltraPEX would cause Plaintiffs' harm or similar harms, and the seriousness of those harms, rendered the warnings and/or instructions of the Defendants inadequate and that Defendants could have provided such warnings and/or instructions that would have been adequate.

10.8 Defendants are strictly liable for Plaintiffs' and the Class' claimed damages by failing to design, manufacture, and/or distribute a reasonably safe product in violation of RCW 7.72 *et seq.* Defendants are also strictly liable for Plaintiffs' and the Class' claimed

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damages because they failed to adequately warn Plaintiffs and the Class that UltraPEX was not suitable for use in hydronic heating systems and would fail prematurely.

10.9 Defendants are also liable under the WPLA because they breached their express written warranty regarding UltraPEX's performance. By selling a product that was defectively designed, would fail prematurely, was not suitable for use in hydronic heating systems, and otherwise was not as warranted and expressly represented, Defendants breached that warranty, which warranted that UltraPEX would be free of defects for a period of 25 years. Plaintiffs' and the Class' harms were proximately caused by UltraPEX's failure to conform to Defendants' express warranty.

10.10 As a result of Defendants' violation of the Washington Product Liability Act, Plaintiffs and the Class are entitled to compensatory damages, attorneys' fees, costs and interest thereon.

XII. FOURTH CLAIM FOR RELIEF
(Unjust Enrichment)

11.1 Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

11.2 Defendants received monies as a result of Plaintiffs' and Class members' purchases of UltraPEX, and Defendants wrongfully accepted and retained these benefits to the detriment of Plaintiffs and Class members.

11.3 Defendants' enrichment at the expense of Plaintiffs and Class members was unjust.

11.4 As a result of Defendants' wrongful conduct, Plaintiffs and the Class are entitled to restitution from and institution of a constructive trust disgorging all profits, benefits and other compensation obtained by Defendants, plus attorneys' fees, costs and interest thereon.

IX. RELIEF REQUESTED

Plaintiffs, on behalf of themselves and all others similarly situated, request that the Court enter judgment against the Defendants, as follows:

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12.1 An order certifying the proposed plaintiff Class;

12.2 A declaration that Defendants are financially responsible for notifying all Class members of the problems with UltraPEX;

12.3 An order enjoining Defendants from further deceptive advertising, marketing, distribution and sales practices with respect to UltraPEX, to cease their warranty claims program and to remove and replace Plaintiffs' and Class members' UltraPEX with a suitable alternative product;

12.4 An award to Plaintiffs and the Class of compensatory, exemplary, and statutory damages, including interest thereon, in an amount to be proven at trial;

12.5 A declaration that Defendants must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of UltraPEX, or to make full restitution to Plaintiffs and the members of the Class;

12.6 An award of attorneys' fees and costs, as allowed by law;

12.7 An award of pre-judgment and post-judgment interest, as provided by law;

12.8 For leave to amend the Complaint to conform to the evidence produced at trial; and

12.9 Such other or further relief as may be appropriate under the circumstances.

DATED this 14 day of August, 2003.

TOUSLEY BRAIN STEPHENS PLLC

By: [signature]
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

DURAND "DEE" SPLATER, et al., Plaintiff(s), vs. THERMAL EASE HYDRONIC HEATING SYSTEMS, INC., ET AL., Defendant(s).	NO. 03-2-33553-3KNT ORDER SETTING CIVIL CASE SCHEDULE ASSIGNED JUDGE: RONALD KESSLER **TRIAL DATE: Tue 1/18/05** (*ORSCS)

On **Thu 8/14/03**, a civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

NOTICE TO PLAINTIFF:

The Plaintiff may serve a copy of this **Order Setting Case Schedule (*Schedule*)** on the Defendant(s) along with the ***Summons and Complaint/Petition.*** Otherwise, the Plaintiff shall serve the *Schedule* on the Defendant(s) within 10 days after the later of: (1) the filing of the ***Summons and Complaint/Petition*** or (2) service of the Defendant's first response to the ***Complaint/Petition***, whether that response is a ***Notice of Appearance***, a response, or a Civil Rule 12 (CR 12) motion. The ***Schedule*** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

"I understand that I am required to give a copy of these documents to all parties in this case."

Print Name Sign Name

I. NOTICES (continued)

NOTICE TO ALL PARTIES:
All attorneys and parties should make themselves familiar with the King County Local Rules [*KCLR*] – especially those referred to in this ***Schedule***. In order to comply with the ***Schedule***, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [*See KCLR 26*], and for meeting the discovery cutoff date [*See KCLR 37(g)*].

SHOW CAUSE HEARINGS FOR CIVIL CASES [King County Local Rule 4(g)]
A *Show Cause Hearing* will be held before the assigned judge if the case is not at issue. The Order to Show Cause will be mailed to all parties. The parties or counsel are required to attend. A Confirmation of Joinder, Claims and Defenses must be filed by the deadline in the schedule.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:
When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:
All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:
A Statement of Arbitrability must be filed by the deadline on the schedule **if the case is subject to mandatory arbitration** and is at issue. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. **Any party filing a Statement must pay a $220 arbitration fee** (effective 10/1/2002). If a party seeks a trial de novo when an arbitration award is appealed, a fee of $250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

NOTICE OF NON-COMPLIANCE FEES: All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Rule 41.

II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE
Case Filed and Schedule Issued	Thu 8/14/03
✓ Confirmation of Service [*See KCLR 4.1*]	Thu 9/11/03
✓ **Statement of Arbitrability** [*See KCLMAR 2.1(a) and Notices on Page 2*] $220 arbitration fee must be paid — OR — [*Consult Local Rules to determine which document applies for your case.*]	Thu 1/22/04
✓ **Confirmation of Joinder of Parties, Claims and Defenses** [*See KCLR 4.2(a)(2)*] *NOTE: If "Joinder" document applies to the case and is not filed, the parties may be required to appear at the Show Cause Hearing.*	Thu 1/22/04
DEADLINE for Hearing Motions to Change Case Assignment Area [*KCLR 82(e)*]	Thu 2/05/04
DEADLINE for Disclosure of Possible Primary Witnesses [*See KCLR 26(b)*]	Tue 8/17/04
✓ Joint Pretrial Report [*See attached order*]	
DEADLINE for Disclosure of Possible Rebuttal Witnesses [*See KCLR 26(c)*]	Tue 9/28/04
✓ Jury Demand [*See KCLR 38(b)(2)*]	Tue 10/12/04
DEADLINE for a Change in Trial Date [*See KCLR 40(e)(2)*]	Tue 10/12/04
DEADLINE: Discovery Cutoff [*See KCLR 37(g)*]	Tue 11/30/04
DEADLINE: Exchange Witness & Exhibit Lists & Documentary Exhibits [*KCLR 16(a)(3)*]	Tue 12/28/04
DEADLINE for Hearing Dispositive Pretrial Motions [*See KCLR 56; CR 56*]	Tue 1/04/05
DEADLINE to Comply with Settlement Conference Requirement [*See attached Order*]	
✓ Joint Statement of Evidence [*See KCLR 16(a)(4)*]	Tue 1/11/05
Trial Date [*See KCLR 40*]	Tue 1/18/05

✓ Indicates a document that must be filed with the Superior Court Clerk's Office by the date shown.

III. ORDER

Pursuant to King County Local Rule 4 [*KCLR 4*], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 8/14/2003

Richard D. Eadie (signature)
Richard D. Eadie

PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER PRIOR TO CONTACTING YOUR ASSIGNED JUDGE

This case is assigned to the Superior Court Judge whose name appears in the caption of this *Schedule*. The assigned Superior Court Judge will preside over and manage this case and will conduct trials, motions, and conferences in this matter until completion of all issues.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

The following procedures hereafter apply to the processing of this case:

APPLICABLE RULES:

Except as specifically modified below, all the provisions of KCLR 4-26 shall apply to the processing of civil cases before Superior Court Judges.

CASE SCHEDULE AND REQUIREMENTS:

A. Trial: Trial is confirmed for 9:00 a.m. on the date on the *Schedule*. The Friday before trial, the assigned court will contact the parties to determine the status of the case and inform the parties of any adjustments to the Trial Date.

B. Show Cause Hearing: A Show Cause Hearing will be held before the assigned judge if the case is not at issue. If the case is not at issue or in accordance with the attached case schedule, all parties will receive and *Order to Show Cause* that will set a specific date and time for the hearing. All parties and/or counsel are required to attend.

C. Joint Pretrial Report: **120 days before the Trial Date**, parties shall prepare and file, with a copy to the assigned judge, a joint pretrial report setting forth the nature of the case, whether a jury demand has been filed, the expected duration of the trial, the status of discovery, the need to amend pleadings or add parties, whether a settlement conference has been scheduled, special problems, etc. Plaintiff's/Petitioner's counsel is responsible for proposing and contacting the other parties regarding said report.

D. Pretrial Conference: A pretrial conference will be scheduled by the assigned judge. Approximately thirty (30) days before the conference, you will receive an *Order Setting Pretrial Conference* that will set the specific date and time for the conference. The conference will be held in the courtroom of the assigned judge, and the following nonexclusive list of matters will be addressed at that time:
1) Status of settlement discussions;
2) Jury trial -- selection and number of jurors;
3) Potential evidentiary problems;
4) Potential motions *in limine*;

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01-2-33553-3 SEA .01. C/C

~~HON. RONALD KESSLER~~
Hon. Terry Lukens

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

DURAND "DEE" SPLATER and CARLA JOHNSON, on their own behalf and on behalf of all others similarly situated, Plaintiff, v. THERMAL EASE HYDRONIC HEATING SYSTEMS, INC., a Washington corporation; PLASCO MANUFACTURING LTD., n/k/a UPONOR CANADA, INC., a Canadian corporation; HOT WATER SYSTEMS NORTH AMERICA, INC., a Delaware corporation; and UPONOR OYJ, also known as UPONOR GROUP, a Finnish corporation, Defendant.	NO. 03-2-33553-3 ~~KNT~~ SEA ORDER CHANGING CASE DESIGNATION AREA FROM KENT TO SEATTLE **(CLERK'S ACTION REQUIRED)**

THIS MATTER having come before the above-entitled Court upon Plaintiffs' Motion for Change of Case Assignment Area dated August 19, 2003, the Court having considered the Motion and the subjoined Declaration of Beth E. Terrell in support thereof, and being fully advised in the premises,

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NOW, THEREFORE, IT IS HEREBY,

ORDERED, ADJUDGED AND DECREED that the Case Assignment Area in this matter is changed from Kent to Seattle. The case is assigned to Hon. Jerry Lukes. The case schedule remains unchanged.

DONE IN OPEN COURT this 21st day of August, 2003.

/s/ Deborah D. Fleck

~~RONALD KESSLER, J.~~

DEBORAH D. FLECK
CHIEF JUDGE, RJC

Presented by:

TOUSLEY BRAIN STEPHENS PLLC

By Beth Terrell

Beth E. Terrell
700 Fifth Avenue, Suite 5600
Seattle, Washington 98104-5056
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IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER PRIOR TO CONTACTING YOUR ASSIGNED JUDGE

This case is assigned to the Superior Court Judge whose name appears in the caption of this *Schedule*. The assigned Superior Court Judge will preside over and manage this case and will conduct trials, motions, and conferences in this matter until completion of all issues.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

The following procedures hereafter apply to the processing of this case:

APPLICABLE RULES:

Except as specifically modified below, all the provisions of KCLR 4-26 shall apply to the processing of civil cases before Superior Court Judges.

CASE SCHEDULE AND REQUIREMENTS:

A. Trial: Trial is confirmed for 9:00 a.m. on the date on the *Schedule*. The Friday before trial, the assigned court will contact the parties to determine the status of the case and inform the parties of any adjustments to the Trial Date.

B. Show Cause Hearing: A Show Cause Hearing will be held before the assigned judge if the case is not at issue. If the case is not at issue or in accordance with the attached case schedule, all parties will receive and *Order to Show Cause* that will set a specific date and time for the hearing. All parties and/or counsel are required to attend.

C. Joint Pretrial Report: **120 days before the Trial Date,** parties shall prepare and file, with a copy to the assigned judge, a joint pretrial report setting forth the nature of the case, whether a jury demand has been filed, the expected duration of the trial, the status of discovery, the need to amend pleadings or add parties, whether a settlement conference has been scheduled, special problems, etc. Plaintiff's/Petitioner's counsel is responsible for proposing and contacting the other parties regarding said report.

D. Pretrial Conference: A pretrial conference will be scheduled by the assigned judge. Approximately thirty (30) days before the conference, you will receive an *Order Setting Pretrial Conference* that will set the specific date and time for the conference. The conference will be held in the courtroom of the assigned judge, and the following nonexclusive list of matters will be addressed at that time:

1) Status of settlement discussions;
2) Jury trial -- selection and number of jurors;
3) Potential evidentiary problems;
4) Potential motions *in limine*;

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5) Use of depositions;
6) Deadlines for nondispositive motions;
7) Procedures to be followed with respect to exhibits;
8) Witnesses -- identity, number, testimony;
9) Special needs (e.g. interpreters, equipment);
10) Trial submissions, such as briefs, Joint Statement of Evidence, jury instructions,
voir dire questions, etc.
11) Receipt of Public Assistance Payments (Domestic Cases) -- **If any party is on public Assistance, notify the Prosecutor's Office of this proceeding now at 296-9020.**

E. Settlement/Mediation/ADR:

1) **45 days before the Trial Date**, counsel for plaintiff shall submit a written settlement demand. Ten (10) days after receiving plaintiff's written demand, counsel for defendant shall respond (with a counteroffer, if appropriate).

2) **30 days before the Trial Date**, a settlement/mediation/ADR conference shall have been held. **FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

3) **20 days before the Trial Date**, counsel for plaintiff shall advise the assigned judge of the progress of the settlement process.

MOTIONS PROCEDURES:

A. Noting of Motions

1) Dispositive Motions: All Summary Judgment or other motions that dispose of the case in whole or in part will be heard with oral argument before the assigned judge. The moving party must arrange with the bailiff a date and time for the hearing, consistent with the court rules.
2) Nondispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. **Rather than noting a time of day, the *Note for Motion* should state "Without Oral Argument."**

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3) Motions in Family Law Cases: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions Calendar.

4) Emergency Motions: Emergency motions will be allowed only upon entry of an *Order Shortening Time*. However, emergency discovery disputes may be addressed by telephone call, and without written motion, if the judge approves.

B. Filing of Papers All original papers must be filed with the Clerk's Office on the 6th floor.
The working copies of all papers in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copy must be delivered to his/her courtroom or to the judges' mailroom. Do not file working copies with the Motions Coordinator, except those motions to be heard on the Family Law Motions Calendar, in which case the working copies should be filed with the Family Law Motions Coordinator.

1) Original Proposed Order: Each of the parties must include in the working copy materials submitted on any motion an original proposed order sustaining his/her side of the argument. Should any party desire a copy of the order as signed and filed by the judge, a preaddressed, stamped envelope shall accompany the proposed order.

2) Presentation of Orders: All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal Proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or Formal Proof may be entered in the Ex Parte Department. If final orders and/or Formal Proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.

C. Form: Memoranda/briefs for matters heard by the assigned judge may not exceed 24 pages for dispositive motions and 12 pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.

Richard D. Eadie
Richard D. Eadie JUDGE

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